

**§ 954.15 Judicial Officer.**

The Judicial Officer is authorized (a) to act as presiding officer at hearings and (b) to render a final Postal Service Decision for the Postmaster General. On appeal from an Initial Decision of an Administrative Law Judge, the Judicial Officer will consider the entire record including the initial decision and the exceptions to that decision. Before any final agency decision has been rendered, the Judicial Officer may order the hearing reopened for the presiding officer to take additional evidence.

**§ 954.16 Procedure.**

(a) *Evidence.* The general rules of evidence governing civil proceedings in matters not involving trial by jury in the courts of the United States apply. The rules may be relaxed to the extent that the presiding officer may deem proper to insure an adequate and fair hearing. The presiding officer may exclude irrelevant or repetitious evidence.

(b) *Subpoenas.* The Postal Service is not authorized to issue subpoenas.

(c) *Fees.* The Postal Service does not pay fees and expenses for witnesses of, or depositions requested by, the publisher or intervenor.

(d) *Depositions.* Depositions may be taken as follows:

(1) Not later than 5 days after the filing of the authorized official's answer, any party may file application with the presiding officer for the taking of testimony by deposition. In support of such application the applicant shall submit under oath or affirmation a statement setting out the reasons why such testimony should be taken by deposition, the time and the place, and the name and address of the witness whose deposition is desired, the subject matter of the testimony of each witness, its relevancy, and the name and address of the person before whom the deposition is to be taken.

(2) If the application is granted, the order for the taking of the deposition will specify the time and place thereof, the name of the witness, the person before whom the deposition is to be taken and any other necessary information.

(3) Each witness testifying upon deposition shall be duly sworn by the dep-

osition officer and the adverse party shall have the right to cross-examine. The questions and answers together with all objections, shall be reduced to writing and, unless waived by stipulation of the parties, shall be read to and subscribed by the witness in the presence of the deposition officer who shall certify it in the usual form. The deposition officer shall file the testimony taken by deposition as directed in the order. All objections made at the time of examination shall be noted by the deposition officer and the evidence objected to shall be taken subject to the objections. In lieu of participating in the oral examination, a party may transmit written interrogatories to the deposition officer, who shall propound them to the witness and record the answers verbatim. Objections to relevancy or materiality of testimony, or to errors and irregularities occurring at the oral examination in the manner of taking the deposition, in the form of the questions or answers, in the oath or affirmation, or in the conduct of the parties and errors of any kind which might be obviated, cured or removed if promptly presented, are waived unless timely objection is made at the taking of the deposition.

(4) At the hearing any part or all of the deposition may be offered in evidence by any party who was present or represented at the taking of the deposition or who had notice thereof. If the deposition is not offered and received in evidence, it shall not be considered as a part of the record in the proceeding. The admissibility of depositions or parts thereof shall be governed by the rules of evidence.

(5) The party requesting the deposition shall pay all fees required to be paid to witnesses and the deposition officer, and shall provide an original and one copy of the deposition for the official record, and shall serve one copy upon the opposing party.

(6) Within the United States or within a territory or insular possession subject to the dominion of the United States, depositions may be taken before an officer authorized to administer oaths by the laws of the United States or of the place where the examination is held; within a foreign country, depositions may be taken before a secretary

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of an embassy or legation, consul general, vice consul or consular agent of the United States, or any other person designated in the order for the taking of a deposition.

(7) Depositions may also be taken and submitted on written interrogatories in substantially the same manner as depositions taken by oral examination. When a deposition is taken upon written interrogatories and cross-interrogatories, none of the parties shall be present or represented, and no person, other than the witness, a stenographic reporter, and the deposition officer shall be present at the examination of the witness, which fact shall be certified by the officer, who shall propound the interrogatories and cross-interrogatories to the witness in their order and reduce the testimony to writing in the witness' own words.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

#### § 954.17 Transcript.

(a) A contract reporter of the Postal Service under the supervision of the presiding officer shall report hearings. The reporter shall supply the parties with copies of the transcript at rates not to exceed those fixed by contract between the Postal Service and the reporter.

(b) Changes in the official transcript may be made only when they involve substantial errors. A party may file a motion for correction of the official transcript within 10 days after his or her receipt of the transcript or any part thereof. Other parties shall, within such time as may be specified by the presiding officer, notify the presiding officer in writing if they object to the requested corrections. Failure of a party to interpose timely objection to a proposed correction may be considered by the presiding officer to be concurrence. The presiding officer shall then specify the corrections to be made in the transcript. He or she may on his or her own initiative order corrections in the transcript after notice to the parties subject to their objection.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

#### 39 CFR Ch. I (7-1-07 Edition)

#### § 954.18 Proposed findings and conclusions.

(a) A party to a proceeding may submit proposed findings of fact and conclusions of law to the presiding officer. The presiding officer shall determine whether they shall be oral or written. The presiding officer may require parties to a proceeding to submit proposed findings of fact and conclusions of law with supporting reasons. When the proposed findings and conclusions are not submitted orally they shall be filed within 15 days after delivery of the official transcript to the Recorder. The Recorder shall notify the parties of the filing date which shall be the same for both parties. If not submitted by that date, the findings and conclusions will not be considered or included in the record.

(b) Except when presented orally, proposed findings of fact and conclusions of law shall be set forth in numbered paragraphs and shall state with particularity all evidentiary facts in the record with appropriate citations to the transcript or exhibits relied upon to support the conclusions proposed. Each proposed conclusion shall be separately stated.

[36 FR 11567, June 16, 1971, as amended at 62 FR 66998, Dec. 23, 1997]

#### § 954.19 Initial decision.

(a) Upon request of either party the presiding officer may render an oral initial decision at the close of the hearing when the nature of the case and the public interest warrant. If a party desires an oral initial decision he or she shall notify the presiding officer and the opposing party at least 5 days prior to the date set for hearing. Parties may then submit proposed findings and conclusions orally or in writing at the conclusion of the hearing.

(b) If an oral initial decision is not rendered, the presiding officer shall render a written initial decision with all due speed after the parties have submitted all posthearing material. The initial decision shall become the final agency decision unless it is appealed.

(c) The initial decision shall include findings upon all material issues of fact